IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10507 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALSUKHBHAI K DUDHAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10507 of 2002

MR PJ KANABAR for Petitioner No. 1

MS SONAL D. VYAS AGP FOR RespondentsNo. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/10/2002

ORAL JUDGEMENT

#. The petitioner has challenged the order passed by the Development Commissioner dated 26th August, 2002, by which, Sarambhada Gram Panchayat is dissolved under

Section 253 of the Gujarat Panchayats Act, 1993 [Referred to as "the Act" for short] for not passing the budget within stipulated time. At the relevant time, the petitioner was the Sarpanch of Sarambhada Gram Panchayat and he has challenged the said order by filing this petition. The elected body of the said Gram Panchayat took charge on 23rd January, 2002 and thereafter budgetary estimates were prepared and the same were sent to Taluka Development Officer and Taluka Development Officer sanctioned the budgetary estimates. The meeting for passing the budget was called on 22-3-2002. The meeting for passing the budget was firstly called on 25th February, 2002 but no decision was taken regarding passing of the budget, so again, the meeting was called on 22nd March, 2002. However, even on that day, the same could not be passed. Since the budget was not passed by 31st March, 2002, a show cause notice was issued and then after hearing the petitioner, the Development Commissioner has passed the order impugned in this petition dissolving the Gram Panchayat on the ground that the said Panchayat has failed to discharge the mandatory duty by not passing the budget by 31st March, 2002. However, it is a case of the petitioner that, subsequently, said budget was passed during the pendency of the proceeding before the authority but before the final order is passed by the authority viz. Development Commissioner. Before the Development Commissioner, the District Panchayat did not submit its opinion in any manner. The Development Commissioner came to the conclusion that since the aforesaid provision is mandatory, the Panchayat is required to be dissolved under the provisions of the Gujarat Panchayats Act. It is contended by the petitioner that in any case, ultimately, the budget has already been passed before final order was passed and therefore, the said aspect was required to be considered by the Development Commissioner. It is submitted by learned advocate Mr.P.J.Kanabar that the petitioner's reply was not taken into consideration.

#. At this stage, a reference is required to be made to the decision of this Court in Special Civil Application No.6968 / 2002. In the aforesaid matter, this Court has already taken a view that passing of the budget by 31st March of a particular year is not mandatory but directory. This Court has taken aforesaid view after taking into consideration the unreported judgment of this Court wherein the view is taken that the said provision is directory. Since the Development Commissioner has decided the matter considering said provisions as mandatory, the matter is required to be sent back to him

for reconsideration on merits. The Development Commissioner has not considered the merits of the case whether there was any justification on the part of the Panchayat for not passing the budget within stipulated time. It is for the Development Commissioner ultimately to form his opinion after considering submissions of the petitioner and after considering the material on record. It is clarified that this Court has not expressed any opinion on merits of the matter and the same is left for consideration of the Development Commissioner.

#. The petition is accordingly allowed. The matter is remanded to the Development Commissioner for fresh decision. The Development Commissioner is directed to take fresh decision in the matter by 31st January, 2003. Since the order of Development Commissioner is set aside, as a natural consequences, the elected body shall be entitled to resume its functions and the order of Development Commissioner appointing the Administrator is also quashed and set aside. Till the Development Commissioner takes fresh decision, the petitioner Panchayat is permitted to function. However, in the mean while, it shall not take any policy decision in connection with affairs of the Gram Panchayat. Rule is made absolute to the aforesaid extent with no order as to cost. Writ to be sent to the Development Commissioner forthwith.

Date : 30-10-2002 [P.B.Majmudar, J.]

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